

**Virginia Birth-Related Neurological Injury Compensation Program  
Board of Director's Meeting  
Minutes for March 10, 2009**

**Attendees:**

Susan Lucas, MD, Ph.D., Chair  
Lain O'Ferrall, Vice-Chair  
Robert Boyle, MD  
Jennifer Ogburn  
Dalal Salomon  
Ralph Shelman  
Gwen Taylor, Esq, MSW  
Scott Walters, Esq

**Also Present:**

George Deebo, Executive Director  
Candace Thomas, Deputy Director  
Iris Allen, Claims Manager  
Angela Conley, Executive Assistant  
Shirley Ricks, Legislative Affairs Coordinator  
Carla Collins, Assistant Attorney General, Office of the Attorney General  
Kimberly Nelson

**Call to Order:**

Susan Lucas, Chair, called the March Board meeting to order at 1:00 pm. Susan Lucas, Chair, made general introductions for those who were present.

**Minutes:**

Carla Collins made a few minor suggestions to the minutes regarding public comment. Susan Lucas motioned to accept the suggested changes. Laine O'Ferrall seconded the motion and it passed unanimously. Laine O'Ferrall motioned to accept the February Board minutes. Gwen Taylor seconded the motion and it passed unanimously.

**Finance:**

Candace Thomas reviewed the financial highlights that included the Balance Sheet and the Profit and Loss Report. Program has \$173 million in investments. There are currently 110 active children in the program. As of February 2009, 38 hospitals have participated with the Program compared to 30 hospitals in 2008. Candace Thomas informed the Board that the audit fieldwork would begin by the end of the week. Ralph Shelman motioned to accept the February Financial reports. Bob Boyle seconded the motion and it passed unanimously.

**Investment:**

Lain O'Ferrall reported to the Board that as of February 28<sup>th</sup>, 2009, the YTD return was -7.7%. Stock market still looking bad but once the economy turns, the Program will see better numbers.

**Legislative Update:**

Shirley Ricks, Legislative Affairs Coordinator, reported that the General Assembly session ended on February 28<sup>th</sup>. Shirley Ricks notified the Board that several organizations, among them the Medical Society of Virginia, Virginia Health and Hospital Association, Virginia Trial Lawyers Association, will be working together to develop possible legislation regarding the malpractice cap. Mrs. Ricks will keep the Board informed of the committee discussions as it becomes available. Mrs. Ricks also plans to visit with key legislatives over the summer.

**Public Comment:**

None.

**Closed Session Regarding (Claimant)**

Jennifer Ogburn moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3705.5 (16) of the Code of Virginia that the Board goes into closed meeting for the purpose of consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Board, and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the provision of legal advice by such counsel regarding pending litigation and case updates to the Program's Guidelines. The motion was seconded by Susan Lucas and passed unanimously.

Jennifer Ogburn moved the adoption of the following resolution:

Whereas, the Virginia Birth-Related Neurological Injury Compensation Program's Board has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and Whereas, Section 2.2-3712 of the Code of Virginia requires a certification by this Board that such closed meeting was conducted in conformity with Virginia law;

Now, therefore, be it resolved, that the Virginia Birth-Related Neurological Injury Compensation Program's Board certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board. Board members were polled and all certified the motion.

**Results of Closed Session (Claimant):**

Susan Lucas motioned that the Board request additional information from the Program's medical consultant as well as the Program's construction manger and table [REDACTED] request until the April Board meeting. Lain O'Ferrall seconded the motion and it passed unanimously.

Susan Lucas motioned that the Board decline [REDACTED] request because all available resources have not been exhausted per the Birth-Injury Act and Program Guidelines. Scott Walters seconded the motion and it passed unanimously.

Susan Lucas motioned that the Board declined to take any action to alter the physician's order for [REDACTED]. Jennifer Ogburn seconded the motion and it passed unanimously.

### **Closed Session Regarding (Case Updates)**

Jennifer Ogburn moved that the meeting convene in accordance with the provisions of Section 2.2-3711 (A)(7) and 2.2-3705.5 (16) of the Code of Virginia that the Board goes into closed meeting for the purpose of consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Board, and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the provision of legal advice by such counsel regarding pending litigation and case updates to the Program's Guidelines. The motion was seconded by Susan Lucas and passed unanimously.

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### **Director's Report:**

George Deebo noted that the Program has developed a process to implement the Florida Actuarial methodology and as a part of that a form will be sent to the primary physician of each claimant requesting information required for the study. George Deebo commented that there still has been no word on the additional Board member.

### **Old Business:**

George Deebo informed the Board that he was still working on the review of the Spanish guidelines.

### **Adjournment:**

A motion to adjourn was made by Susan Lucas, Chair, at 3:15 pm. It passed unanimously.